RESTRICTIVE LEGISLATION AGAINST PUBLIC SERVICE CORPORATIONS IN NEW JERSEY[1]

By Frank Bergen,
General Counsel for the Public Service Corporation of New Jersey,
Newark, N. J.

I am one of those who believe that the good will of the public is a valuable asset for a corporation; that the public after all gets the better of the bargains commonly made by corporations and municipalities and for that reason I look upon the hostile sentiment in which the companies have recently been compelled to work as a two-fold injury—injurious to the public by retarding the work, and injurious to the companies for the same reason. Whoever, therefore, seeks to create or aggravate thoughtless hostility for any reason cannot be regarded as a discreet friend of the people, even if he is acting in good faith.

Before commenting on the legislation at present being proposed in New Jersey, it may be helpful to recall one or two facts often overlooked in discussing the imperfections of our corporations. During the past thirty years the legislature of this state has enacted a series of statutes designed deliberately to give greater freedom to corporations than was enjoyed in former years; to invite capital to make its domicile here, to offer security to enterprise and investment, and to render it forever unnecessary to resort to direct taxation to support the government of the state. Neither political party is entitled to a monopoly of the credit or to the odium of this legislation. It was enacted in compliance with a policy written in the constitution by the people themselves in mandatory language in the autumn of 1875.

Among the amendments of the constitution adopted in that year is this: "The legislature shall pass no special act conferring corporate powers; but they *shall* pass general laws under which corporations may be organized and corporate powers of every nature obtained," subject, of course, to alteration, amendment and repeal. Since that amendment was adopted the growth of the

[1]Address on Public Utility Bills before the New Jersey Senate committee on municipal corporations, March 2, 1908.

state in population and in commerce and industry has been amazing. Governor Stokes in his last message to the legislature gave some of the figures, and they clearly show that if it is one of the legitimate objects of statesmanship to obtain for the people plenty of the so-called good things of this life the policy I have referred to was an immense success. Let me read a passage of two from the swan-song of the retiring governor. I like to read his pure and lucid English. He says:

"From 1870 to 1906 the population of our state has grown from 907,000, to nearly 2,250,000. During the same period the capital invested in manufacturing interests has increased from $80,000,000 to $715,000,000; the number of wage earners from 76,000 to 267,000; the amount paid in wages, every year, from $33,000,000 to $129,000,000; the value of the annual product of manufactured goods from $170,000,000 to $175,000,000.

"In 1870, 58,000 horse-power furnished by 2,000 steam engines and other motors turned the wheels of industry, while to-day 9,000 steam engines and motors are employed, with an aggregate of 460,000 horse-power." It would be difficult to find in the history of civilization a more gratifying record of prosperity.

I do not say that this amendment to the constitution and the statutes I have referred to were unwise—much less, wicked—as some incendiary agitators throughout the country have said, for I have learned that good and evil consequences flow from every grant of freedom; that tares and wheat still grow together. What I venture to suggest is that it would be unwise, in a moment of ill-humor, to burn the wheat-field to get rid of the tares while thousands are in want of bread; and what I object to is the purpose, rampant until recently, of suddenly reversing this policy and visiting its iniquity (if there is anything wrong about it) entirely on those who accepted the state's invitation and its hospitality.

The legislation now under consideration indicates a radical change of policy. Instead of inviting it frightens capital; in place of security it proposes confiscation. Whatever may have been the purpose of the authors of these bills, the mere threat of such legislation as this has closed mills, restricted industry, destroyed credit, appointed receivers, and turned thousands of worthy people out of work. These bills propose to adopt policies that were condemned by the people in 1896, and again in 1900, and

later still by actual experience in other states. Mr. Bryan said the other day, and I think truly, that recent events have shown that the party of which he is the peerless leader is not the only one under which the country can plunge from the summit of prosperity to the depths of disaster and distress. But he omitted to add that the débâcle occurred just as he began to accuse the party in power of stealing his political ideas and writing them in the statute books of the country.

But this is not all. The Crimes Act will be much enlarged if this legislation passes. Besides the law, orders of the commission are to become criminal statutes. Disobedience is a misdemeanor punishable by fine or imprisonment. The guilty and the innocent are united in condemnation, and our captains of industry hereafter, if they dare to do anything, must work in the shadow of the penitentiary. I will read a paragraph or two from the bill introduced by the senator from Hunterdon. It is a valuable contribution to the literature of this discussion, because the senator states boldly and plainly what the other bills mean. Section 64 of the senator's bill is in these words: "64. The officers and directors of all public utility corporations are hereby deemed and declared to possess and to have knowledge and notice of the various acts, deeds, conduct, commissions and omissions of all and singular, their superintendents, managers, agents, servants or any other employees, so far and insomuch as any of such acts, deeds, conduct, commissions or omissions are or may be in any way related to the operation, management or control and conduct of any business or branch thereof engaged in or in any way carried on by any public utility of this state. Any violation of the several provisions of this act or any violation of any regulation, ruling, or order issued by the board, by any of the foregoing superintendents, managers, agents, servants or any other employees, of any public utility, shall be and the same are hereby declared to constitute the act, deed, conduct, commission or omission of the officers and directors of such public utility or utilities; and such officers and directors of such public utilities or utility shall be deemed and held responsible both criminally and civilly for any such violations, as aforesaid, and no plea of personal ignorance, nor actual personal ignorance of any such aforesaid violation or violations shall enable any of said officers or directors to escape any civil or criminal liability which may or

which shall result by or through any violations of the several provisions of this act."

This bill, for the first time in the history of the criminal law, states as plainly as language can express intention, that innocence shall not constitute a defense to a charge of crime. Hundreds of acts, no matter how trifling, that heretofore have been nothing but neglect or disobedience of orders issued in the course of business, are made crimes by these bills, and the officers and directors of the corporations, which these bills make victims, are declared to be guilty of crimes, although they knew nothing of the act or neglect which is said to constitute the crime. Who would dare to serve as a director or officer of one of these corporations if such a bill should pass, or who else would feel safe in a state where such a bill could be passed?

I have spoken of this bill as a valuable contribution to this discussion because it indicates clearly the spirit in which these bills are written. Another of these proposed measures in effect proposes to revive the thumbscrew and the rack in a less repulsive form than in the olden days. It undertakes to force citizens of New Jersey to become their own accusers. These bills, if they truly represent the dominant public sentiment of this country, would seem to indicate that we are entering upon a mild revival of the French Revolution. The wealthy and the prosperous are to be hunted and banished as enemies of the Republic. Innocence is not to be a defense any longer. All that the prosecutor will have to do is to prove that the defendant is a director of one of the corporations referred to in these bills, and that somebody else committed the crime, probably some one whom the defendant never saw or heard of. Indictment is to take the place of the guillotine—perhaps because our Committee of Public Safety think it more humane to blast a man's reputation than to cut off his head. We have already made some progress in this revolutionary process. The Reign of Terror has been revived, and already extends over the industry and commerce of the country.

These bills are drawn upon the theory that property owned by public service corporations is private for the purpose of taxation and public for the purpose of management and control. Under the pretense of regulation they propose to appropriate the property of the companies subject to their provisions. The value of property

consists in its use, the control that the owner has over it and its income. If you must let another man control and use your property as he pleases, your legal title to it becomes merely a worthless shell.

But we are told that it is proper for the state to confiscate property belonging to the class of corporations mentioned in these bills because they exercise franchises derived from the state. That claim cannot bear serious examination. A franchise is simply permission given by statute to establish and carry on a certain kind of business just as other kinds of business may be established and carried on under the common law. It is true the state can withdraw the franchise, although in view of the modern practice of accepting payment for franchises it would be an act of bad faith to do so, but the state cannot touch the remaining property. As all kinds of business are carried on under the protection of the law, statute or common, and cannot be carried on otherwise it would (if the argument I refer to is sound) be an easy matter to appropriate or destroy all of the property in the state by simply refusing to protect it in the hands of its owners any longer.

Let us press the argument a little further and see where it leads. If the state should disband its militia and all the police forces in the state, discharge all its constables and peace officers, and pass an act making it unlawful for a man to use a lock on the door of his dwelling, store or stable, or to employ watchmen to guard his property, the effect undoubtedly would be to destroy private property to such an extent that nothing really could be called private property except what a man might be able to protect by his own physical strength. The state perhaps has a right to do all these things just as it has a right to withdraw its protection from the money invested in the property of certain corporations, but there is no more justification for doing so in their case than in the case of farmers, merchants, manufacturers or owners of real estate. Many things are constitutional that are not expedient. But if this new theory of the ownership of property should be confined for the present to the property of corporations only, why should it not be extended to the property of all corporations instead of a few? A very large part of the capital belonging to the people of this state is invested in corporations other than those mentioned in these bills. They also exercise franchises, and it is quite as com-

petent for the legislature to force those corporations to dissolve or divide their property with the public as it is to require a street railroad company to do so. The argument contemplates anarchy. Of course the gentlemen who advocate these bills, having been caught and confused by an economic whirlwind, do not clearly see where the course ends which they wish you to pursue.

The moment legislation goes beyond regulation and assumes control and management of property it to that extent appropriates the property and violates that provision of the constitution which declares that "private property shall not be taken for public use without just compensation first made." There is no exception to that wholesome provision. Again it is said that legislation of this character is not restricted by the constitution but is justified by the "police power," a strange growth that has enlarged on the body politic in recent years, sapping the vitality of constitutions and statutes and the security of all property. Mr. Justice Brewer, of the Supreme Court of the United States, noticing this tendency, spoke of it in a recent opinion as follows: "It seems to me that the police power has become the refuge of every grievous wrong upon private property. Whenever any unjust burden is cast upon the owner of private property which cannot be supported under the power of eminent domain or that of taxation it is referred to the police power, but no exercise of the police power can disregard the constitutional guarantees in respect to the taking of private property, due process and equal protection, nor should it override the demands of natural justice."

Still again we are told that as some of these franchises have turned out to be much more valuable than they were supposed to be when granted, or rather that the business established by the corporations holding such franchises has prospered more than was expected many years ago, therefore the state has a right to repudiate its part in these transactions and seize so much of the property as represents the unexpected success. No state capable of realizing the turpitude of such an act will ever commit it. The state should indemnify corporations against loss, if it intends to appropriate a part of their profits. If the success of an enterprise using a franchise justifies the state in seizing and appropriating the accumulated property or any part of it, why should not the government of the United States reclaim every acre of farm land

and every building lot in the valley of the Mississippi. That land was either given by the government to actual settlers or sold for a dollar or so an acre. It is probably worth a hundred times as much to-day. A few years ago the late Henry George argued with much skill that the increased value or "unearned increment" of real estate belonged to the public, but he never persuaded any state to seize it. The same policy when directed against corporations and supported by weaker arguments does not seem to be quite so shocking.

Look around for a moment and see the consequences of the agitation that has for its object such legislation as this. There is not, so far as I know, anywhere in the state, a single business enterprise or plant worth speaking of, now in course of construction, that would, if it existed, be subject to any of these bills. Nothing of the kind has been commenced within two years; not a new gas, electric light or water works or street railroad, not even a steam railroad, has been planned and commenced within that time; and improvements and extensions of existing plants of that character have been stopped or restricted within the narrowest possible limits. Why has this creeping paralysis extended all over the state? Because those having money to invest realize the danger of investing in a corporation that can be bled pale by taxation and have its income reduced by so-called regulation to an amount not much, if anything, above what its customers wish to pay. No business can be carried on successfully on such terms.

While the preaching of these incendiary doctrines frightened and injured only the millionaires riding in their club cars and in Pullmans, the people were taught to rejoice as they saw the mighty falling. By and by when the stress of commercial and industrial disaster began to press heavily on the commuters and the plain people, we were assured that only the wealthy wicked had any real or just cause of alarm; but now when thousands of locomotives and freight cars are rusting on the side tracks and the gravel trains have come in and discharged their crews, we are comforted with a strange application of Lincoln's inspired utterance that the judgments of the Almighty are just and righteous altogether.

The good sense of the legislature of this state has heretofore been a sufficient protection against legislation of the kind pro-

posed; although we are not without a little experience. In the year 1892 an act was passed to create an electrical commission. In print it looks as well as any of these bills now pending; but it was not so comprehensive, as it applied only to companies engaged in the electrical business. Still, it reads as if it had been written by a strong committee of the best friends of the people. I will not stop to relate its history or its reputation except to say that it became one of the most odious scandals of that scandalous age. Statutes like that were called "dandy" legislation in the political jargon of the day. It was passed a year before the race track laws appeared on our statute books, and was repealed the same day when they were repealed. You may find the four repealers printed closely together in the early pages of the pamphlet laws of 1894.

Those who are urging the passage of these bills do not remember that legislatures such as now sustain the state, have not always controlled its destiny. They have forgotten the history of the early nineties, and that history has a bad habit of repeating itself. There is not a single safeguard in any of these bills that cannot be swept away in twenty-four hours. It is nearly always unwise to crystallize passion into a statute. Twelve years ago an act was passed making it a criminal offense for any street railroad company, except those companies that were already engaged in that occupation, to carry freight or express matter on its cars. Ten years later an act was passed to authorize the carrying of freight and express matter on trolley cars after obtaining consent of the municipalities along the line. No trolley company except one has attempted to operate under that act, and the benefit that the people of the state might have obtained by a wise treatment of the subject has been lost for a dozen years, and no one can tell when, if ever, that convenience will be obtained. Again two years ago a bill was passed to limit the term of franchises granted to public service corporations to a period not exceeding twenty years, or forty when approved by a popular vote. The next legislature passed another bill to extend the term for which such franchises might be granted in certain localities to fifty years. In the haste of its passage its constitutional defects were not observed, and another bill is now pending to accomplish the same purpose in a constitutional manner.

Another act was passed a year or so ago to prohibit the issue and sale of securities of such corporations except on certain terms, and the first bill passed by the present legislature is a relaxation of the rule therein laid down. I mention these instances, not to condemn their purpose, but to point out the error of passing bills affecting the vital interests of the state without the most careful deliberation. The people of New Jersey may count themselves very fortunate indeed that our legislature during the past few years, while this plague of hysteria has been raging throughout the country, has refused to be swept off its feet, and therefore we have as yet but little crude and vicious legislation on our statute books.

The advocates of the bills now proposed, however, seek to justify their position by reference to the so-called Hughes bill enacted by the legislature of New York about a year ago. The effect of that statute and its value to the public are slowly coming to be understood. The author does not show the slightest experience in the organization, construction, maintenance or operation of any of the plants of corporations with which the law deals. The technical education and skill required for that purpose and which have been acquired by a generation of experience through failure and success are entirely unknown to him. His knowledge of such matters had been obtained entirely from books. Subsequently the bill was tinkered into a little better shape than that in which he had left it and hastily passed. The rushing sentiment of the time did not permit rational and deliberate discussion of its scope and probable effect. Two commissions were appointed under the law, consisting, no doubt, of the best men whom a high-minded governor could impress into the public service. One of these commissions began operations in the City of New York and shortly precipitated a great street railroad system into the hands of receivers, destroying the remaining credit of the company and giving it another excuse for failing to cope successfully with an impossible problem. Already a very liberal transfer system which existed in New York is being restricted by the breaking up of the system of street railroads that was controlled by the operating company. This is part of the price that the people must pay for the pleasure of seeing the company in the hands of receivers and its securities sinking out of sight. The commission operating in the city has unearthed and republished a great deal of scandal, sparing neither the living nor the dead; but the substantial benefit that the people

looked for from that legislation is still invisible. The commission is entitled to credit only for the improvements in the service since their appointment which the company would not have made if the commission had not interfered. I am informed that not a car has been purchased by the company since the commission was appointed; not an improvement made that had not been planned before. We all know that the transportation system in New York has been a constant evolution of improvement, from the old Broadway stages and the horse cars lighted by lamps, carpeted with wet straw, and not heated at all (taking forty-five minutes to run from the City Hall to Forty-second Street), to the electric street cars, elevated railroads and subways of the present day. Those improvements were made by the companies, and the process of improvement seems to have been stopped instead of expedited by the commission. It is true that about a million and a quarter dollars have been expended by both commissions, and I am told that more than a million and four hundred thousand dollars have been called for to continue their campaign for another year. I shall not characterize their work—no doubt a little more experience will do that sufficiently. The public has gained nothing, the holders of the securities of the company have suffered seriously; and the rascals who plundered its treasury are still at large.

One of the gentlemen who were here recently advocating the passage of these bills seemed to rejoice that the street railroad system of New York was in the hands of receivers and that other companies in the same class were also in that predicament. He seemed to think that destruction and bankruptcy are among the legitimate purposes of such laws. They certainly have that effect. Within the past few days applications have been made to the court of chancery of this state for the appointment of receivers for three trolley companies engaged in constructing a line diagonally across the state from Camden to Elizabethport. We are obtaining some of the benefits of this kind of legislation even before any of these bills are reported for passage.

There is not now, and there never was in this state, any genuine public sentiment demanding the passage of such bills as these. The bills, artificial sentiment and all, are importations. They are aimed at abuses that no longer exist and at methods that are no longer practiced. There is not a single promoter, as far as I know, now roaming about the state plying his calling.

No one is soliciting a so-called franchise from any municipal body to construct, or even to extend, any plant operated by companies that are referred to in these bills. All we ever needed in this state was a wisely drawn statute regulating the issuing of securities by public service corporations. Experience has shown elsewhere, and would show here, that the operation of such properties cannot be carried on successfully by the dual control of a commission and a board of directors. We were taught long ago that no man can serve two masters. Neither can a corporation.

I represent especially the Public Service Corporation of New Jersey, which was formed about five years ago for the purpose of providing additional capital immediately needed in large amounts to reconstruct, better equip and extend large systems of street railroads and gas and electric properties. That company has never put one drop of water in its stock or in the stock of any company which it controls. The par value of its shares is $100, and $100 in cash have been paid into the treasury of the company for every share of stock that has been issued. Since that company obtained control of the street railroad, gas and electric properties I have referred to, it has expended tens of millions in their betterment. It has twice raised the wages of its employees on its street railroad system, without solicitation—without asking—simply to aid them to meet the increased cost of living which we all know has occurred in recent years. During the same period the price of gas and of electricity has been repeatedly reduced in many parts of the state, and trolley fares also, notwithstanding the increase in the cost of fuel and raw material, which the company needs in large quantities in the conduct of its business. Millions have been spent, and millions more are needed to put these properties in a more satisfactory condition in order that they may render better service to the public and become more valuable to their owners. The companies controlled by the Public Service Corporation pay a little more than $1,000,000 annually in taxes. They employ more than 8,000 citizens of New Jersey, and pay out daily in wages the sum of $22,500; more than $600,000 every month and over $8,000,000 a year, and the other companies that would be affected by these bills pay out still larger sums to a still larger number of our citizens.

The duty of the hour, as I understand it, is to provide work for the unemployed. A few days ago a bill was introduced appro-

priating the sum of $10,000 a year to establish free employment agencies in various cities throughout the state. The bill is a bit of pure paternalism; but I think it is necessary to pass it. How can those having the welfare of the state in charge pass bills of this sort and then strike a vicious blow at the sources from which the working people of the state and their families now obtain a large part of their livelihood? It is not only humane, but I think prudent, for the state not to injure the industries that are still active, but to exercise all of its healing and paternal powers. It would be a kindness to the advocates of such bills as these to do so, because when the idle get hungry they may discover who are responsible for their distress.

I am convinced that the wisest course to pursue would be to lay all of these bills aside for the present until we find out what real benefit, if any, the people of other states shall obtain from similar laws which they have passed. That course would save at least one hundred thousand dollars the first year. Besides, it would save and enhance the state's reputation for sanity and conservatism. A year or so hence we will be able to see more clearly what value there is in legislation of this character, and then if we still think that we must copy from the law books of other states we can at least have the satisfaction of copying their wisdom and not their mistakes.